

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

PATRICIA M. MAJOR JESTER, ) No. CV 11-03997-VBK  
)  
Plaintiff, ) MEMORANDUM OPINION  
) AND ORDER  
v. )  
) (Social Security Case)  
MICHAEL J. ASTRUE, )  
Commissioner of Social )  
Security, )  
)  
Defendant. )  
\_\_\_\_\_  
)

18        This matter is before the Court for review of the decision by the  
19    Commissioner of Social Security denying Plaintiff's application for  
20    disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have  
21    consented that the case may be handled by the Magistrate Judge. The  
22    action arises under 42 U.S.C. §405(g), which authorizes the Court to  
23    enter judgment upon the pleadings and transcript of the record before  
24    the Commissioner. The parties have filed the Joint Stipulation  
25    ("JS"), and the Commissioner has filed the certified Administrative  
26    Record ("AR").

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge ("ALJ") should have

afforded the opinion of the treating doctor greater weight than the opinion of the consultative examiner;

2. Whether the ALJ failed to provide clear and convincing reasons to reject Plaintiff's subjective limitations.

(JS at 3.)

This Memorandum Opinion will constitute the Court's findings of fact and conclusions of law. After reviewing the matter, the Court concludes that the decision of the Commissioner must be affirmed.

II

**THE ALJ PROPERLY DEPRECIATED**

THE OPINION OF PLAINTIFF'S TREATING PHYSICIAN

In her first issue, Plaintiff disputes that portion of the ALJ's decision which accords less weight to the opinion of her treating physician, Dr. Myers, than to the opinions of two orthopedic consultative examiners ("CE"), and the medical expert ("ME") who testified at the hearing.

After exhaustively reviewing the medical evidence, the ALJ determined not to give "controlling or even great weight" to Dr. Myers' evaluation and opinion. (AR 24, opinion at 569-574; treatment notes at AR 577-650.) Several reasons are stated in the decision which include the following:

1. That Dr. Myers' opinion is contradicted by his own treatment notes;

2. That the objective medical evidence in the record did not support Dr. Myers' opinion;

3. That Dr. Myers' opinion was in conflict with the opinions of

1                   both orthopedic CEs; and

2       4. That the orthopedic CEs would be entitled to greater  
 3                   consideration because of their area of expertise.

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5                   With regard to the first reason, Dr. Myers assessed significant  
 6                   limitations in Plaintiff's ability to stand, sit, and stand/walk. He  
 7                   concluded that Plaintiff could not stand for more than one hour at a  
 8                   time, but during an eight-hour day, she could sit for four hours, and  
 9                   could stand/walk for about four hours. (AR 572.) This conclusion is  
 10                  contradicted by the fact, noted by the ALJ, that the medical record  
 11                  contains "no objective evidence from any acceptable medical sources  
 12                  which confirm a severe medically determinable impairment affecting the  
 13                  claimant's lower extremities or her lumbar spine." (AR 24.) In the  
 14                  briefing in this case, Plaintiff does not challenge or point to any  
 15                  evidence which would provide objective support for the functional  
 16                  restrictions assessed by Dr. Myers. But in addition, the ALJ noted  
 17                  that despite Plaintiff's severe pain complaints, Dr. Myers only  
 18                  prescribed ibuprofen for her pain. (AR 617.) This conservative  
 19                  treatment regimen belies an assessment that Plaintiff was in more  
 20                  serious or continuous pain.

21                  The ALJ's reliance on the opinions of the orthopedic CEs instead  
 22                  of that of Dr. Myers, who is an internal medicine doctor, is a factor  
 23                  that is supported by both regulation and case law. See 20 C.F.R. §  
 24                  404.1527(d)(5) ("We generally give more weight to the opinion of a  
 25                  specialist about medical issues related to his or her area of  
 26                  specialty than to the opinion of a source who is not a specialist.").  
 27                  See also Social Security Ruling ("SSR") 96-2p, and Edlund v.  
 28                  Massanari, 253 F.3d 1152, 1157 (9<sup>th</sup> Cir. 2001).

1 For the foregoing reasons, the Court finds that substantial  
2 evidence supported the ALJ's depreciation of Dr. Myers' opinions as to  
3 Plaintiff's functional abilities, and his heavier reliance on the  
4 opinions of the consultative examiners and the medical examiner.

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6 **II**

7 **THE ALJ PROPERLY ASSESSED PLAINTIFF'S CREDIBILITY**

8 **AS TO HER SUBJECTIVE LIMITATIONS**

9 In her decision, the ALJ found that Plaintiff's subjective pain  
10 complaints "are not credible to the extent they are inconsistent with  
11 the above residual functional capacity assessment." (AR 22.) In  
12 making this evaluation, the ALJ relied upon certain well-established  
13 credibility criteria, which are set out in SSR 96-7p. These included  
14 the following:

- 15 1. That while Plaintiff reported some neck, shoulder and  
16 bilateral upper extremity pain, in the treating source  
17 medical records, she consistently denied neck or shoulder  
18 pain other than indicating that her neck would "pop and  
19 click."
- 20 2. While Plaintiff described her daily activities as being  
21 affected by the fact that her elbows hurt every day  
22 regardless of her activity, in contemporaneous reports to  
23 her treating physician, she repeatedly indicated there was  
24 no pain while resting, but only with activity.
- 25 3. Plaintiff conducts certain activities of daily living which  
26 would seem inconsistent with chronic pain.
- 27 4. In September 2008, Plaintiff reported chronic pain in both  
28 her upper and lower body, but throughout other State Agency

1 reports, she consistently denied any impairment which  
2 affected her lower extremities, and there is no objective or  
3 other evidence from acceptable medical sources documenting  
4 a severe impairment as to her lower extremities.

5 (AR 22-23.)

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7 An ALJ may not rely solely upon an inconsistency between  
8 objective medical evidence and pain complaints to deprecate the  
9 latter; however, the fact of contradictions or inconsistencies between  
10 objective medical evidence and pain complaints may be considered as  
11 one factor in the credibility analysis. See Burch v. Barnhart, 400  
12 F.3d 676, 681 (9<sup>th</sup> Cir. 2005). In addressing this issue in the  
13 briefing, Plaintiff notes that she did in fact report neck pain to her  
14 doctors. The ALJ acknowledged that she did report such pain, but the  
15 point, for credibility assessment, was that in other contemporaneous  
16 reports, she failed to do so. In a situation of chronic pain, as  
17 Plaintiff claims, it would be reasonable to expect consistent  
18 reporting as to the existence of such pain.

19 As the ALJ noted, Plaintiff claimed in her Disability Report that  
20 she suffers from depression ("I am always depressed I have difficulty  
21 sleeping."). (AR 199.) Despite that, the ALJ noted that there was no  
22 medical evidence in the record of any psychological or psychiatric  
23 treatment, and Plaintiff was never prescribed antidepressant  
24 medications. (AR 19; see also AR 21.) Plaintiff's argument is that it  
25 was improper for the ALJ to reject Plaintiff's allegation of  
26 depression based on the fact she had insufficient treatment prescribed  
27 for it. (JS at 13-14, citing Nguyen v. Chater, 100 F.3d 1462, 1465 (9<sup>th</sup>  
28 Cir. 1996.) Plaintiff's argument is misplaced, however, because the

1 issue here is whether an individual recognizes the existence of a  
2 mental impairment, such as depression. Plaintiff certainly did  
3 recognize that she had such depression. The inconsistency with regard  
4 to credibility is that she never repeated these claims to her  
5 physicians, and she never received any type of treatment whatsoever  
6 for depression. It is fair to observe that Plaintiff has an extensive  
7 medical treatment record, and so the lack of reporting, and presumably  
8 of any resulting treatment which might have been prescribed, would not  
9 be due to Plaintiff's inability to obtain medical treatment. The  
10 Court concludes that the issue concerning contradictions as to  
11 Plaintiff's depression is part of a reasonable and sustainable  
12 credibility analysis.

13 For the foregoing reasons, the Court finds no validity in  
14 Plaintiff's second issue.

15 The decision of the ALJ will be affirmed. The Complaint will be  
16 dismissed with prejudice.

17 **IT IS SO ORDERED.**

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19 DATED: February 8, 2012

/s/  
20 VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE1

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